

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RESPONSE UNDER RULE 116
EXPEDITED HANDLING PROCEDURES

In re Patent Application of

Atty PTB-4398-176

Dkt.

C# M#

DANTANARAYANA

C/A.U.

3734

Serial No. 09/868,875

Examiner: Michael G. Mendoza

Filed: September 18, 2001

Date: April 17, 2007

Title: THIN FLEXIBLE ENCLOSURE FOR SUPPRESSING NOISE IN APPARATUS FOR
 SUPPLYING BREATHABLE GAS

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

RESPONSE/AMENDMENT/LETTER

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

☐ **Correspondence Address Indication Form Attached.****Fees are attached as calculated below:**

Total effective claims after amendment 30 minus highest number
 previously paid for 30 (at least 20) = 0 x \$50.00 \$0.00 (1202)/\$0.00 (2202) \$

Independent claims after amendment 5 minus highest number
 previously paid for 5 (at least 3) = 0 x \$200.00 \$0.00 (1201)/\$0.00 (2201) \$

If proper multiple dependent claims now added for first time, (ignore improper); add
 \$360.00 (1203)/\$180.00 (2203) \$

Petition is hereby made to extend the current due date so as to cover the filing date of this
 paper and attachment(s)
 One Month Extension \$120.00 (1251)/\$60.00 (2251)
 Two Month Extensions \$450.00 (1252)/\$225.00 (2252)
 Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)
 Four Month Extensions \$1590.00 (1254)/\$795.00 (2254)
 Five Month Extensions \$2160.00 (1255)/\$1080.00 (2255) \$

Terminal disclaimer enclosed, add \$130.00 (1814)/ \$65.00 (2814) \$

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee \$180.00 (1806) \$ 0.00

Assignment Recording Fee \$40.00 (8021) \$ 0.00

Other: \$ 0.00

TOTAL FEE \$ 0.00

☐ **CREDIT CARD PAYMENT FORM ATTACHED.**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYE P.C.
 By Atty: Paul T. Bowen, Reg. No 38,009

Signature: _____



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

DANTANARAYANA

Atty. Ref.: 4398-176; Confirmation No. 1264

Appl. No. 09/868,875

TC/A.U. 3734

Filed: September 18, 2001

Examiner: Michael G. Mendoza

For: THIN FLEXIBLE ENCLOSURE FOR SUPPRESSING NOISE IN APPARATUS FOR
SUPPLYING BREATHABLE GAS

* * * * *

April 17, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

CONFIRMATION OF TELEPHONIC INTERVIEW

Applicant's representative conducted a telephonic interview with Examiner Michael Mendoza on April 17, 2007. During the telephonic interview, the Examiner agreed that the finality of the rejection is improper for the reasons specified in Applicant's January 17, 2007 amendment after final rejection

Furthermore, during the telephonic interview, the Examiner agreed that Miller (U.S. Patent No. 5,272,285) does not teach or suggest the method of claim 9 for the reasons specified in Applicant's January 17 Amendment. In addition, claim 27 was discussed, in particular, a noise suppressing member consisting essentially of a thin flexible enclosure provided to said electric motor. Miller discloses a clam-shell type sound attenuating design and includes an outer layer of a relatively rigid, bendable resilient material and an inner layer of a flexible sound absorbent material. See column 2, lines 61-64. Therefore, Miller does not teach or suggest a

noise suppressing member consisting essentially of a thin flexible enclosure as recited in claim 27.

During the telephonic interview, the Examiner indicated that his supervisor took the position that the foam inner layer 16 of Miller is a noise suppressing member consisting essentially of a thin flexible enclosure. Applicant's representative disagrees with this assessment since it is clear that Miller discloses a sound attenuating cover 10 which includes both the outer layer 14 of rigid material and the inner layer 16 of foam material. Thus, Miller's sound attenuating cover does not consist essentially of a thin flexible enclosure. Moreover, even if the foam layer 16 is the noise suppressing member, that member is not a thin flexible enclosure. Miller's layer 14 cannot qualify as an enclosure since it simply a layer that is affixed to the shell.

In addition, according to MPEP §2111.03 ("Transitional Phrases"), the transitional phrase "consisting essentially of" limits the scope of the claim to the specified materials or steps and those that do not materially affect the basic and novel characteristics of the claimed invention. Miller specifies that the layer 16 is preferably constructed of a fiberglass or other flexible and suitably sound absorbent material, and that material is then attached to the interior surfaces of the relatively hard or rigid outer layer by means of a glue pressure sensitive adhesive or the like. Thus, Miller teaches the combination of a rigid outer shell and an inner layer that is essentially affixed to the inner shell, such that the overall design does not constitute a thin flexible enclosure as recited in claim 27, as well as claims 1, 9 and 18.

During the interview, the Examiner indicated that his supervisor is of the opinion that the term "thin" renders the claim indefinite under 35 U.S.C. §112, second paragraph. Applicant's representative again reminds the Examiner that this case has been pending for over five years, including the term "thin" in the independent claims, and this is the first time this rejection has

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Appl. No. 09/868,875
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been mentioned. As such, its introduction at this late phase in prosecution is quite untimely. In any event, the term "thin" in the context of the present specification would be readily understood by one of ordinary skill in the art and therefore is definite and satisfies the requirements of 35 U.S.C. §112, second paragraph.

This response is being filed at the request of the Examiner in order to trigger the Examiner into issuing a non-final Office Action which includes the Amendments filed January 17, 2007 since the October 17, 2006 Office Action was made improperly final. As such, it is not believed that Applicant should be required to submit a Request for Three Month Extension of Time or a Notice of Appeal. Nonetheless, out of an abundance of caution, Applicant's representative hereby authorizes the Patent Office to charge Applicant's Deposit Account No. 14-1140 under Order No. PTB-4398-176 should a Notice of Appeal and the three month extension fees be necessary.


In view of the above remarks, Applicant respectfully submits that all the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHUYE P.C.

By: _____


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